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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,
Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,
Defendant.

No. P1300CR20081339

Div. 6

**DEFENDANT'S REPLY IN
SUPPORT OF *IN LIMINE*
MOTION TO PRECLUDE THE
USE OF EVIDENCE DISCLOSED
IN VIOLATION OF ARIZONA
RULE OF CRIMINAL
PROCEDURE 15.1 AND THIS
COURT'S ORDERS**

Defendant Steven DeMocker, by and through counsel, hereby replies to the State's response to Defendant's Motion *In Limine* to preclude the State's use of evidence that was in its possession but not timely disclosed pursuant to the deadlines set by Arizona Rule of Criminal Procedure 15.1 and this Court's Minute Entry Orders dated June 3, 2009 and September 22, 2009.

ARGUMENT

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA
2009 DEC 15 PM 1:19
JEANNE HENRICH, CLERK
BY: Shaunna Kelbaugh

1 The State's Response details the disorganized and confusing manner in which the
2 State has produced over 16,000 pages of documents and hundreds of CDs. CD's of
3 interviews are reproduced without any indication that they were previously provided.
4 Documents are produced multiple times, often without Bates numbers. And for many
5 documents there is no way to match the evidence item number with the Bates numbered
6 documents that refer to that item. Even given the chaos of the State's ongoing
7 disclosure, the State acknowledges that it had financial records constituting evidence
8 item nos. 1200-1204 and 1206-1207 in its possession from July 2008 that were not
9 disclosed to the defense until July 2009. The State did not even ask for an extension of
10 time to produce this disclosure until the day after it was due under the Court's June 22,
11 2009 deadline. This evidence constitutes over 3,300 pages of records that the State had
12 for over a year before providing them to the defense.

13 While the State's Response indicates that it did not receive Bates numbers
14 10371-10546 until July 30, 2009, these documents have a print date of July 28, 2008
15 and police reports indicate that these documents were provided by John Casalena to the
16 State on July 28, 2008. (See Bates No 1939). On August 21, 2008, these documents
17 were provided to Detective Page. (See Bates No. 1944). It is clear that these documents
18 were in the possession of the State well before the July 30, 2009 date the State now
19 chooses to attach to them. These were not disclosed, as the State must acknowledge,
20 until August 3, 2009, again more than a year after the State came into possession of
21 them.

22 The State's Response also admits, as it must, that CD 6127 is an interview of Mr.
23 Janusek from July 3, 2008 that was not disclosed to the defense until November 2009.

24 The State also makes much of the fact that Mr. DeMocker's Motion does not
25 identify evidence relied on at the *Chronis* hearing but disclosed after this Court's
26 October 2, 2009 deadline. Now that the State has finally (on December 9, 2009)

1 *partially* complied with this Court's October 30 ruling to provide the defense with a list
2 of what Mr. Echols relied upon "as soon as possible at the conclusion of today," it is
3 obvious that Mr. Echols relied on at least some documents that were not provided in
4 compliance with the Court's October 2nd deadline.¹ For example, although no Bates
5 numbers are provided by Mr. Echols, he states that in forming his opinion about the
6 "book of business" he relied on a "Retiring Financial Advisor Agreement" from Anna
7 Young's file. This document is found at Bates Nos. 13853-13861 and was not disclosed
8 to the defense until November 3, 2009. Instead of taking responsibility for its failure to
9 comply with the Court's Orders and the Arizona Rules of Criminal Procedure, the State
10 contends that the defense request that the Court hold the State accountable by excluding
11 the late disclosed evidence is "extremely disingenuous." (State's Response at 2.)
12 Counsel have repeatedly raised the issue of the State's late disclosure and failure to
13 comply with Rule 15.1 both with the State and with this Court. With a capital trial only
14 four full months away, the State continues to provide the defense with vast quantities of
15 disclosure, while failing to meaningfully cooperate to schedule interviews of the 130
16 witnesses they claim will be called at trial. Any disingenuousness behavior here has not
17 been on the part of the defense.

18 Rule 15.7 permits the Court to impose any sanction it finds appropriate where a
19 party violates the disclosure required under Rule 15 and specifically contemplates
20 exclusion of use of evidence as a sanction. *See* Ariz. R. Crim. P. 15.7(a). The -
21 court "shall order disclosure and shall impose any sanctions it finds appropriate,
22 unless –the court finds that the failure to comply was harmless or that the
23 information could not have been disclosed earlier even with due diligence and the
24 information was disclosed immediately upon its discovery." *See State v Newell*

25
26
27 ¹ The State has not complied in that it has failed to provide the Bates numbers of the documents Mr. Echols has
28 relied on and instead has provided only a description.

1 (Milagro), 221 Ariz. 112, 210 P.3d 1283 (1 CA-SA 09-0052, Court of Appeals, filed
2 June 2, 2009).

3 The State has failed to explain how its late disclosure is not harmful. Any
4 suggestion to the contrary defies common sense. The defense is not able to review,
5 evaluate and prepare a defense without full disclosure. Nor can the State reasonably
6 dispute that it could have disclosed the evidence earlier with due diligence or, truthfully
7 state that it was disclosed "immediately" upon discovery. Bates numbered documents
8 6826-10174 and 10371-10546 and CD 6127 were each in the possession of the State for
9 well over a year before being provided to the defense.

10 All late disclosed evidence should be excluded from trial as should all further
11 late disclosed evidence that may come in after the filing of this Motion.

12 **CONCLUSION**

13 Defendant Steven DeMocker, by and through counsel, hereby moves this Court
14 to preclude all materials in the possession of but not disclosed by the State subsequent
15 to the deadlines ordered in the Court's Minute Entry Orders dated June 3, 2009 and
16 September 22, 2009.

17 DATED this 15th day of December, 2009.

18
19 By: _____

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25 Attorneys for Defendant

26 **ORIGINAL** of the foregoing
27 filed this 15th day
of December, 2009, with:

1 Jeanne Hicks
2 Clerk of the Court
3 Yavapai County Superior Court
4 120 S. Cortez
5 Prescott, AZ 86303

6 **COPIES** of the foregoing delivered
7 this 15th day of December, 2009, to:

8 The Hon. Thomas B. Lindberg
9 Judge of the Superior Court
10 Division Six
11 120 S. Cortez
12 Prescott, AZ 86303

13 Joseph C. Butner, Esq.
14 Yavapai County Attorney
15 Prescott courthouse basket

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